

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOAN HARRIMAN, . Civil No. 96-CV-03670-JS
Vs. .
. 824 Federal Plaza
. Central Islip, NY
UNITED STATES OF AMERICA, .
et al., .
. July 30, 2008
.

TRANSCRIPT OF TELEPHONE STATUS CONFERENCE
BEFORE HONORABLE E. THOMAS BOYLE,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For The Plaintiff: JOAN HARRIMAN
P.O. Box 40
East Hampton, New York 11937

For The Defendant: U.S. DEPARTMENT OF JUSTICE
BY: BARTHOLOMEW CIRENZA, ESQ.
P.O. Box 55, Ben Franklin Square
Washington, DC 20044

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

TERRY GRIBBEN'S TRANSCRIPTION SERVICE
27 Beach Road, Unit 4
Monmouth Beach, NJ 07750
(732) 263-0044 Fax No. 732-263-0075

Colloquy

2

1 COURT CLERK: Calling case 96-CV-3670, Harriman
2 versus United States. Parties, please state your appearance
3 for the record.

4 MR. CIRENZA: Bartholomew Cirenza representing the
5 United States. Good morning, Your Honor.

6 THE COURT: Good morning.

7 MS. HARRIMAN: Joan Harriman, plaintiff. Good
8 morning, Your Honor.

9 THE COURT: Good morning. Neither of you I think
10 know who I am but just to tell you what happened here. It
11 appears that there was consent jurisdiction as both of you
12 noted, Judge Orenstein who is handling the case. However, he
13 recused himself from any further involvement in this case. And
14 the reason was probably that he has taken what would be the
15 equivalent of senior status as a magistrate Judge and is no
16 longer handling pro se cases.

17 So by random selection, you all were fortunate enough
18 to have the wheel stop on me. So we have a threshold issue and
19 that is with regard to the consent jurisdiction. And I would
20 be happy to try this case, but at this point, the only way that
21 I can try this case would be if you issued the same mutual
22 consent that you did to Magistrate Judge Orenstein.

23 And that's entirely up to each of you and neither one
24 of you is under any compulsion to do that. In the event that
25 you fail to do that, then the case would go back to Judge

Colloquy

3

1 Seybert who's the assigned district Judge. So I don't know if
2 you've had the opportunity to discuss this but it's really a
3 threshold issue that has to be addressed. So if anyone would
4 like to make any comment.

5 If you would prefer to consider it and we can set up
6 another phone conference on this, but it's really critical to
7 this case going forward. Because my understanding in reviewing
8 this case over the 12 years that it has been pending, you had
9 an opportunity to prepare the case for trial and simply has to
10 be set down for trial. And I'm prepared to do that. So if I
11 could hear from anyone?

12 MR. CIRENZA: Your Honor, I'm more than happy to
13 receive a consent form or maybe the suggestion is to have one
14 sent directly to Ms. Harriman, ask her to execute it if she
15 chooses to, and if she does, she could forward it to me. And
16 then I could forward it on to the Court. I'm trying to think
17 of the best logistical way of dealing with this.

18 THE COURT: All right, that would work. Ms.
19 Harriman, anything you would like to comment on? And as I
20 said, if you would like an opportunity to consider it without
21 committing yourself, I understand that if this is the first
22 time you've heard about this.

23 MS. HARRIMAN: Judge Boyle, I am sure that you're
24 competent to hear this case. Otherwise, you wouldn't be in the
25 position you're in. The reason that it went to Judge Orenstein

Colloquy

4

1 was because I needed a fall or a spring trial date. And Judge
2 Seybert did not have that. And that's why it was to Judge
3 Orenstein. And at this date, I have researched Rule 45 which
4 is the subpoena and I need to subpoena the former employee who
5 lives in Manorville (phonetic) of the IRS, who's involved in
6 this case. And this is going to take some time.

7 And I was wondering if we did go forward with this,
8 that it might be advantageous for everyone to have a trial date
9 set for next April which would give everyone time. Because I
10 do believe that the opposition is going to probably put a
11 motion in to quash my subpoena of this person.

12 THE COURT: All right. I would be very, very
13 reluctant in, I can't tell you how rare it is in, I would say
14 in my whole period on the bench, I have seen maybe one other
15 case, and that was an environmental cleanup case that involved
16 an outside government agency. It's unheard of for a case to go
17 12 years.

18 MS. HARRIMAN: Yes, it's unfortunate. Judge Platt
19 denied the Government an extension. They didn't answer until
20 three months later and then asked for an extension and he
21 denied that. And then that sat for several years until finally
22 Judge Seybert listed it about three years later. And then for
23 the motion for summary judgment, that took a year and a half.
24 So all these things have been delayed.

25 But I can't, you know, just because of all that, it

Colloquy

5

1 was probably no one's fault. But I just need some time to
2 prepare. I'm grateful for the trial, but I need some time to
3 prepare. And this subpoena --

4 THE COURT: Ms. Harriman, you've had 12 years in this
5 case. So your request, I would be glad to consider a mutually
6 convenient date this year, and I have some dates to discuss
7 with you in the event that there's consent here. But if you're
8 seeking to put this case over until April for trial because
9 you're subpoenaing somebody, subpoena them now and we'll deal
10 with the issue of a motion to quash and will resolve it.

11 MS. HARRIMAN: Well, isn't that 60 days that I need,
12 Your Honor, to subpoena someone? Don't I need 60 days on that?

13 THE COURT: Okay. Well, at this point, we have to
14 deal with the first issue first. You tell me, whether you want
15 this case to go back to Judge Seybert, or whether you want to
16 consent trial? Or if you want time to consider it, I would be
17 glad to put this over for a few days.

18 MS. HARRIMAN: Well, I've already lost --

19 THE COURT: But let's make some decisions here.

20 MS. HARRIMAN: -- a month and a half, Your Honor,
21 between all these papers going back and forth. And I don't
22 know how I could possibly get late September or early October
23 date and still have time to subpoena which I believe is 60
24 days.

25 THE COURT: I don't follow you.

Colloquy

6

1 MS. HARRIMAN: I believe I have to give 60 days
2 notice to subpoena someone, is that correct?

3 THE COURT: I'm saying you have to deal with the
4 first issue first. And the first issue is whether or not
5 there's any consent here to a trial. If it isn't, I'll send it
6 back to Judge Seybert to deal with.

7 MS. HARRIMAN: Well, I'm certainly consenting to a
8 trial, but the reason that it was switched from her is that she
9 didn't have a September, October date. And she probably
10 doesn't even have a December date at this point, because that
11 was the last thing we heard and that was several months ago.
12 So I'm just concerned that I have enough time to subpoena
13 someone, which I believe is 60 days and still have a full
14 trial.

15 THE COURT: All right.

16 MS. HARRIMAN: I don't know how that could happen and
17 I don't know, you know, if you have any suggestion.

18 THE COURT: I don't know if you heard what I said. I
19 said I can assure you of a trial date this year. But I'm not
20 going to adjourn the case until next year.

21 MR. CIRENZA: Your Honor, what dates did you have
22 available for trial in the event Ms. Harriman did consent?

23 THE COURT: Yes. I have, how long is this case going
24 to try, take --

25 MR. CIRENZA: One day max.

Colloquy

7

1 THE COURT: I'm sorry?

2 MR. CIRENZA: One day max.

3 THE COURT: Good. Ms. Harriman, you agree with that?

4 MS. HARRIMAN: Possibly, I would think one day if we
5 could pick the jury in the morning. Is that possible?

6 THE COURT: Is this a jury trial?

7 MR. CIRENZA: She has requested a jury, Your Honor.

8 MS. HARRIMAN: Yes.

9 THE COURT: Okay, sure.

10 MS. HARRIMAN: So if we pick the jury in the morning,
11 do that in the afternoon.

12 THE COURT: What we would do is pick the jury in the
13 morning and then try the case in the afternoon and go over, you
14 know, to the following day if necessary.

15 MS. HARRIMAN: Correct.

16 THE COURT: All right. Let me give you some dates,
17 all right? September 15th.

18 MS. HARRIMAN: Pardon me?

19 THE COURT: September 15th, November 3rd and November
20 17th.

21 MS. HARRIMAN: As I said to Judge Seybert, I'm 75 and
22 I've had multiple injuries in a car accident. I was rear ended
23 four years ago. I'm not supposed to travel in extreme heat or
24 extreme cold and, you know, I'm worried about coming, I'm
25 worried about driving in a snowstorm. I have family in

Colloquy

8

1 different parts of the country who are ill right now.

2 And that's what I was concerned about, trying to
3 have, the September 15th would not be impossible if I am, but
4 I'm not sure that the subpoena. I cannot find a timeframe for
5 the subpoena, Your Honor. Do you know if it's 60 days or if
6 it's not 60 days, then I can just subpoena, I have researched
7 the subpoena. I can't find a timeframe for the federal court
8 subpoena date timeframe to subpoena a person.

9 THE COURT: Mr. Cirenza, what do you want to do with
10 this case?

11 MR. CIRENZA: Well, Your Honor, it sounds like she's
12 talking about a trial subpoena and I think reasonable notice
13 would be sufficient.

14 MS. HARRIMAN: Pardon me?

15 MR. CIRENZA: I assume reasonable notice which, you
16 know, seven to 10 days notice of a witness would probably be
17 reasonable.

18 MS. HARRIMAN: Would you agree to seven to 10 days
19 for a witness, Mr. Cirenza?

20 MR. CIRENZA: It's really not up to me. If you're
21 going to subpoena a witness, it's for the witness to decide
22 whether or not that witness has sufficient notice and whether
23 or not that witness wishes to challenge that subpoena.

24 MS. HARRIMAN: Yes, and if they do challenge the
25 subpoena, Your Honor, what happens to that trial date?

Colloquy

9

1 THE COURT: I don't deal on hypotheticals. I deal in
2 real cases, all right. What I'm trying to do is ascertain
3 whether or not there's consent on this case and if we can set
4 this case down for a trial date. You can subpoena whatever
5 witness you feel is appropriate. The Government can make any
6 motion they feel is appropriate. I will decide any motion.

7 MS. HARRIMAN: Does that mean the trial date might be
8 delayed?

9 THE COURT: I don't believe so.

10 MR. CIRENZA: My suggestion as the most conservative
11 approach is to select the November 3rd date, so there can be no
12 question that there's sufficient time for Ms. Harriman to serve
13 whatever subpoena she thinks are appropriate well in advance of
14 that date and it certainly won't be too cold at that time of
15 year.

16 MS. HARRIMAN: I could run into snow and you know
17 that, Mr. Cirenza. So September 15th would be fine with me.

18 MR. CIRENZA: Oh, September 15th is fine?

19 MS. HARRIMAN: September 15th would be fine if we can
20 pull all this together. Your Honor, I need to ask you a
21 question as a new Judge coming in here. Will you have time to
22 review the motions on this 12 year old case by September 15th?
23 I know your calendar is crowded, I'm sure like other Judges?

24 THE COURT: You worry about your case, all right?
25 I'll worry about whatever I have to do to appropriately judge

Colloquy

10

1 this case.

2 MS. HARRIMAN: And will you have enough time, do you
3 think, Your Honor, to review if we have a September 15th trial?

4 THE COURT: The jury pick date then would be the 8th
5 and will commence the trial on the 15th.

6 MS. HARRIMAN: You will have enough time to review
7 this case, Your Honor?

8 THE COURT: I certainly will.

9 MS. HARRIMAN: All right, I just needed to know that.

10 THE COURT: Now, did you hear what I said? The jury
11 pick date is the 8th of September.

12 MS. HARRIMAN: The jury pick date is the 8th of
13 September?

14 THE COURT: That's correct, that's a Monday. And
15 then the trial will commence the following week.

16 MS. HARRIMAN: No, I can't do that. I need it in the
17 same week.

18 THE COURT: I'm sorry?

19 MS. HARRIMAN: I can't do that. I need it in the
20 same week. I have someone ill in my family I can't be away
21 that long. The way it was going to be with Judge Seybert, I
22 believe, was that we pick the jury in the morning and go to
23 trial in the afternoon.

24 MR. CIRENZA: We actually never got that far.

25 MS. HARRIMAN: I believe we did, but I can't be away

Colloquy

11

1 from my ill person that long. I need like to pick the jury one
2 day and go to trial the next, the same week.

3 THE COURT: All right. Ms. Harriman, can you hear
4 me?

5 MS. HARRIMAN: Yes.

6 THE COURT: Just for you, just for your case, I will
7 bring in a separate jury pool for the 15th, even though that is
8 not an ordinary date. Mr. Cirenza, I'm going to send you the
9 consent form and if you would please do that, and get it back
10 within a week.

11 MR. CIRENZA: Okay. Do you want me to forward it to
12 Ms. Harriman or send it right back to the Court?

13 THE COURT: No, I need you to obtain her consent as
14 well, forward it on to her and she can return it to me.

15 MR. CIRENZA: Okay.

16 THE COURT: Okay? Ms. Harriman, we need an address
17 for you because I understand --

18 MS. HARRIMAN: Post office box 40, East Hampton and
19 that has been my address for 30 years.

20 THE COURT: Say it once more, please?

21 MS. HARRIMAN: Post office box 40, in East Hampton,
22 New York 11937. That has been my address for the past 30 years
23 and I still have it.

24 THE COURT: Why then can't you pick a jury on the
25 8th? You're about an hours ride from the courthouse?

Colloquy

12

1 MS. HARRIMAN: Your Honor, I am retired. I am 75
2 years of age. My family is in different parts of the country,
3 from Montana to Massachusetts. We visited each other. We try
4 to take care of each other and we travel. And as a retired
5 person, I don't have to be in one place all the time. So I am
6 traveling at different times trying to take care of ill members
7 of my family and we are all elderly. That's my situation.

8 THE COURT: Do you have a cell phone number or how do
9 people contact you when they want to talk to you?

10 MS. HARRIMAN: The cell phone number is what I'm
11 talking on right now and it's 850-628-8173.

12 THE COURT: 1673?

13 MS. HARRIMAN: No. 850-628-8173.

14 THE COURT: 8173.

15 MS. HARRIMAN: That's right.

16 THE COURT: Okay. I will wait until I receive back
17 the necessary consents and if you could get that back to me
18 within a week, that would be good and then we'll make special
19 arrangements with regard to the jury.

20 MS. HARRIMAN: I don't understand what's happening,
21 Your Honor. You're going to make a jury on September 15th and
22 then we can go to the trial in the afternoon, is that what's
23 happening here?

24 THE COURT: That's correct.

25 MS. HARRIMAN: All right. And Mr. Cirenza is going

Colloquy

13

1 to send me the consent? Could the Court send me the consent?
2 I mean, are we not going to have a trial date until you get
3 this consent in your hand?

4 THE COURT: Mr. Cirenza is going to sign the consent
5 form and he's going to send it on to you. And you have to
6 return it to the Court. Mr. Cirenza, would you be so kind as
7 to provide an address and a stamped envelope for the plaintiff?

8 MR. CIRENZA: Not a problem, Your Honor, I'll be
9 happy to do that.

10 THE COURT: Thank you. Okay.

11 MS. HARRIMAN: Are we definite, Your Honor, we have a
12 September 15th trial date?

13 THE COURT: That's correct.

14 MR. CIRENZA: Now, Your Honor, I was going to request
15 that as soon as you do have the consent and it is absolutely
16 certain that you have jurisdiction to try this case, that we
17 have another telephone conference because there's an issue I do
18 want to talk about, which is jurisdiction on at least two of
19 the years that is still at issue.

20 MS. HARRIMAN: Judge Seybert has already decided that
21 this Court has jurisdiction in one of her orders.

22 MR. CIRENZA: Your Honor, the jurisdictional issue
23 that the United States has become aware of prior to the filing
24 of the joint pretrial order, not previously briefed, I
25 addressed this to Judge Seybert and we didn't get too far with

Colloquy

14

1 trial dates. So that's an issue, I think is an initial hurdle.

2 THE COURT: Mr. Cirenza, are you saying there's an
3 undecided motion out there with regard to this issue?

4 MR. CIRENZA: No, there is no motion. What I'm
5 saying is that there is a jurisdictional, we ordered, to it in
6 the joint pretrial order. The jurisdictional defect with
7 regard to at least two of the years and I did want to talk
8 about the other two years, because I just think that a trial
9 and ultimately having a trial in this case, there's nothing to
10 try.

11 MS. HARRIMAN: Your Honor, this was brought up before
12 Judge Seybert in the pretrial conference, all of these things,
13 and she has put an order through that the Court has
14 jurisdiction over all the four years in question. And this is
15 another delay.

16 And two weeks not showing up for the telephone
17 conference is another delay by Mr. Cirenza. And also, he was
18 supposed to send me a copy of the order that you sent out and
19 he never did that. So all of these are delays.

20 The Government had 12 years to raise these issues and
21 they already have, and Judge Seybert has ordered that the Court
22 has jurisdiction over all four years.

23 THE COURT: Okay. Well, I would be glad to have a
24 conference before the trial, but Mr. Cirenza, this sounds like
25 in a 12 year old case, it's a little bit late to raise

Colloquy

15

1 jurisdictional issues?

2 MR. CIRENZA: Well, it's never too late to raise
3 jurisdictional issues, Your Honor. And it would be
4 inappropriate for this Court to make a ruling on a tax year
5 where you had no jurisdiction, only to be reversed on appeal.

6 THE COURT: Right. All right, let's deal with the
7 consent form. You have a trial date September --

8 MS. HARRIMAN: Your Honor, are you going to hear him
9 on this jurisdiction?

10 THE COURT: I'm sorry?

11 MS. HARRIMAN: Are you going to hear, are you going
12 to set a telephone conference on this jurisdiction he just
13 raised?

14 THE COURT: I said the request was by the Government
15 that there be another phone conference before the trial date
16 and I said I would do that.

17 MS. HARRIMAN: I don't agree to that.

18 THE COURT: Okay, you can disagree --

19 MS. HARRIMAN: Because this is more delays and I have
20 an enormous amount of work to do to get, you know, research and
21 I have to get a new accounting group to do an accounting of the
22 interest. I have to go to an accounting group to do that and I
23 have an enormous amount to do. And if he's going to request
24 that, then maybe it better go back to Judge Seybert, because
25 she's the one that knows this case.

Colloquy

16

1 THE COURT: Mrs. Harriman, I said to you I have set
2 this case down for the 15th of September.

3 MS. HARRIMAN: And I agree, but I do not agree to
4 allow them to bring a jurisdiction issue up at this point.

5 THE COURT: Are you going to try to talk over me, Ms.
6 Harriman?

7 MS. HARRIMAN: No, I'm sorry, I'm not trying to talk
8 over you, Your Honor.

9 THE COURT: And I am bringing in a separate jury pool
10 just for the purpose of this case, just for this selection and
11 it's the 15th, that is a date certain. Does everybody
12 understand that?

13 MR. CIRENZA: Yes.

14 THE COURT: Okay. All right. So get in your consent
15 form. I will enter an order and Mr. Cirenza, if you would pick
16 it off the ECF please, and serve it on Ms. Harriman.

17 MR. CIRENZA: I will.

18 THE COURT: And I will see everybody on the 15th.

19 MS. HARRIMAN: Your Honor, I am not consenting to
20 have this go before you, because you're apparently going to
21 allow him to bring up a jurisdiction issue. And I feel if he's
22 going to bring up a jurisdiction issue, that it better go back
23 to Judge Seybert, because she knows this case.

24 THE COURT: Well, you can make your application to
25 the Court. Make your application to Judge Seybert.

Colloquy

17

1 MS. HARRIMAN: You mean, you want me to go now to
2 Judge Seybert?

3 THE COURT: If you're refusing to consent, then make
4 your application to take the case back to Judge Seybert.

5 MS. HARRIMAN: Yes. Because he should not, if he's
6 bringing a jurisdiction issue up, that's something that she
7 knows best about. He should not be bringing this up at this
8 late date, nor should the Court allow a telephone conference on
9 it.

10 THE COURT: I'll give you seven days to make that
11 application, is that adequate?

12 MS. HARRIMAN: That would be fine, Your Honor. I
13 will make that application to Judge Seybert.

14 THE COURT: Okay, thank you very much. Good-bye.

15 MS. HARRIMAN: Thank you.

16 MR. CIRENZA: Thank you.

17 * * * * *

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I, TRACY GRIBBEN, a Certified Electronic Transcriber do hereby certify that the foregoing transcript of proceedings is a true and accurate transcript of the motion as recorded in the matter of Joan Harriman v. United States of America, et als., heard by the U.S. District Court on July 30, 2008.

Date: _____

TRACY GRIBBEN

TERRY GRIBBEN'S TRANSCRIPTION SERVICE